(1)

Supreme Court, U.S.
FILED

No. 961875 MAR 10 1997

OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

OTTIE HOOKER

Petitioner,

V.

PRODUCERS TRACTOR COMPANY, et al

Respondent.

Petition For Writ Of Certiorari To The
Arkansas Supreme Court for the Sixth Judicial Circuit

PETITION FOR WRIT OF CERTIORARI

Ottie Hooker
Route 2, Box 100
Palestine, AR 72372
(501) 581-2436

In propria persona

22 pp

QUESTIONS PRESENTED

1. This Court should grant the Petition to resolve the Constitutional question, arising under this USA Constitution, Article III § 2 as this Petitioner was not granted his guaranteed and secured USA Constitutional Right to trial by jury nor did the trial court fulfill its obligation and duty to afford a trial by jury to this Petitioner.

2. This Court should grant the Petition to resolve the Federal Constitutional question of the conflict with applicable decisions of this court as to call for an exercise of the Court's power of supervision.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i
TABLE OF CONTENTS ii
TABLE OF AUTHORITIES iii
OPINIONS BELOW 1
JURISDICTION 1
CONSTITUTIONAL PROVISIONS 2
STATEMENT OF THE CASE 2-6
THE PROCEEDINGS BELOW 6
REASONS FOR GRANTING WRIT 7
CONCLUSION 7-8
INDEX TO APPENDICES 9

TABLE OF AUTHORITIES

Cases Page

BOYD vs U.S., 116 US. 635 (1886) 5

MAGNA CARTA of 1215 4-5

MARBURY vs MADISON, 5 U.S. 391 (1803) . . 4

MIRANDA vs ARIZONA, 384 U.S. 491 (1966). .4

PENNSYLVANIA COAL CO. vs MAHON, 260 U.S. . 393, 413 (1922) 4

STATE OF GEORGIA vs BRAILSFORD, 3 Dall. 1 5

Constitutional Provisions

USA CONSTITUTION Art. III § 1 & 2 . . 1,3,7

USA CONSTITUTION BILL OF RIGHTS, Article VII 2,3,4

USA CONSTITUTION BILL OF RIGHTS, Article XIV 7

Statutes

28 U.S.C. § 1254 (1) 1

Rules

U.S. Supreme Court Rule 10.1(a)(c) 1

OPINION BELOW

The unpublished written decision of the Arkansas Supreme Court appears in Appendix page App. 1 of this Petition and the said denial of Petitioner's Petition for REHEARING EN BANC appears in Appendix page App. 2; the written decision of the trial court the St. Francis County Chancery Court, First Judicial Circuit, to sequester equipment and directing Sheriff to take possession, appears in Appendix page App. 3; the written decision of the trial court filed the 18th day of April, 1996 appears in Appendix page App. 5.

◆

JURISDICTION

Jurisdiction is conferred upon the United States Supreme Court pursuant to the U.S.A. Constitution Article III § 1 and 2; Rules of the Supreme Court of the United States Rule 10.1 (a)(c); Title 28 USC § 1254 (1).

◆

CONSTITUTIONAL PROVISIONS

U.S.A. Constitution, Bill of Rights, Article VII.

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, . . ."

STATEMENT OF THE CASE

Petitioner, Ottie Hooker, respectfully request that a Writ of Certiorari issue to review the decision of the Arkansas Supreme Court for the Sixth Judicial Circuit wherein the said Court dismissed Ottie Hooker's Appeal thereto, see Appendix page App. 1; this Petitioner filed for a Petition To ReHear En Banc which was denied, see Appendix page App. 2; the trial court the Chancery Court of St. Francis County, Arkansas, for the First Judicial Circuit of Arkansas, entered an Order allowing Sequestration of Equipment Directing Sheriff to take possession, and Vacating Scheduling Order (TR-III-43) entered May 2, 1996, see Appendix page App.

3; the written decision of the trial court denying numerous Constitutional Rights including Petitioner's U.S.A. Constitution, Bill of Rights, Art. VII [right to trial by jury *"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, . . ."* which was denied and the Order thereof filed on the 18th day of April, 1996, see Appendix page App. 5.

1. This Court should grant the Petition to resolve the Constitutional question arising under this USA Constitution, USA Constitution Article III § 2 as this Petitioner was not granted his guaranteed and secured USA Constitutional Right to trial by Jury nor did the trial Court fulfill its Obligation and Duty to afford a trial by Jury to this Petitioner.

Petitioner herein filed a civil complaint against Producers Tractor Company therein demanding a Common-law trial by Jury. As this case progressed the trial court issued an Order allowing Sequestration of Petitioner's farming equipment and directing the Sheriff to take possession thereof, thereafter dismissing my civil complaint and denying my said Constitutional Right to a Common-law trial by Jury.

2. The Court should grant the Petition to resolve the Federal question of the conflict with applicable decisions of this Court as to call for an exercise of the Court's power of supervision.

As this United States Supreme Court has applied the applicable decisions as to the USA Constitution, Bill of Rights, Art. VII in the following cases:

That the Bill of Rights, the Seventh Amendment is bound upon the State of Arkansas by and the Contract Clause of the [USA] Constitution and the Due Process Clause of the [Bill of Rights] Fourteenth Amendment, PENNSYLVANIA COAL COMPANY V MAHON et al, 260 US 393, 413 (1922).

The USA Constitution is the Supreme Law of the Land and:

"that a law repugnant to the Constitution is void and that Courts as well as other departments are bound by that instrument." MARBURY V MADISON, 5 U.S. 391 (1803).

"Where Rights secured by the [USA] Constitution are involved there can be no rule making or legislation which would abrogate them," MARINDA V ARIZONA, 384 U.S. 491 (1966.

The MAGNA CARTA OF 1215 guarantees a

Common-law Jury and is one of the most important documents supporting our Federal [USA] and State Constitutions.

Even this USA Supreme Court in the case of the STATE OF GEORGIA vs. BRAILSFORD et al. 3 Dall. 1, conducted a Jury Trial as a Jury Trial is a guaranteed and secured Constitutional Right.

The Trial Court in this case had an Obligation and Duty to secure the Substantive Rights of the Petitioner Ottie Hooker to afford him a Jury Trial as *"in suits at common-law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved,"* [the value in controversy in this case far exceeded twenty dollars], thus the Trial Court possessed a Duty and an Obligation under BOYD DOCTRINE.

"It is the duty of the Courts to be watchful for the Constitutional Rights of the Citizen and against any stealthy encroachments thereon." BOYD v. U.S., 116 US 635 (1886).

The Trial Court erred in allowing this Petitioner his demanded Constitutional Right to a Common-law Trial by Jury thus this U.S.A. Supreme Court should grant the Petition to resolve the Federal question of

the conflict with applicable decisions of this Court, cited herein, as to call for an exercise of this Court's power of supervision.

THE PROCEEDINGS BELOW

Petitoner appealed the Summary Order from the Trial Court which denied him his Constitutional Right and his Substantive Right to a Common-law trial by Jury, and summarily dismissed his complaint without a demanded trial by Jury and subsequently [seized] sequestratored Petitioner's framing equipment leaving Petitioner without the means to feed his family. App. 3

The Appeal to the Arkansas Supreme Court was dismissed after this Appellant's Brief was filed, App. 1.

Petitioner filed a Petition for En Banc Hearing which was denied, App. 2.

The Trial Court the Chancery Court of St. Francis County, Arkansas, denied this Petitioner his fundamental secured and guaranteed Constitutional Right and Substantive Right to a demanded Common-law trial by Jury of which the trial court possessed an Obligation and a Duty to pro-

vide, App. 5.

◆

REASONS FOR GRANTING WRIT

This supreme Court should grant this Petition to resolve the Federal Constitutional question arising under this USA Constitution USA CONSTITUTION ART. III § 2, i.e. Petitioner's BILL OF RIGHTS, SEVENTH AMENDMENT Right to a Common-law trial by Jury,"*In suits a common-law, where the value in controversy shall exceed twenty dollars,*" whis is bound upon the State of Arkansas by and through the FOURTEENTH AMENDMENT, and as the Trial Court's decision and the Arkansas Supreme Court's decisions are in conflict with the applicable decisions of this Supreme Court and the USA CONSTITUTION THE SEVENTH AMENDMENT.

◆

CONCLUSION

For the foregoing reasons, the Petitioner respectfully request this Honorable

Court to grant this Petition.

Date: March 7, 1997

Respectfully submitted
without prejudice,

Ottie Hooker

Ottie Hooker
Route 2, Box 100
Palestine, AR 72372
(501) 581-2436

In propria persona

INDEX TO APPENDICES

LAW OR CHANCERY MANDATE, dismissing Appeal
Nov. 6, 1996 . . . . . App. 1

ARKANSAS SUPREME COURT ORDER
Petition for En Banc Hearing Denie
Dec 9, 1996 . . . . . App. 2

ORDER ALLOWING SEQUESTRATION OF EQUIPMENT
DRIECTING SHERIFF TO TAKE POSSESSION AND
VACATING SCHEDULING ORDER (TR-III-431)
(entered May 2, 1996) . . . . . App. 3

CHANCERY COURT OF ST. FRANCIS COUNTY, ARK.
ORDER DENYING (This Petitioner) TRIAL BY
JURY AND OTHER DEMANDED RIGHTS, April 18,
1996 . . . . . .App. 5

LAW OR CHANCERY MANDATE

State of Arkansas,)
) SCT.
In the Supreme Court)

BE IT REMEMBERED, That at a session of the Supreme Court of the State of Arkansas, begun and held in the City of Little Rock, on the 4th day of November, 1996, amongst others were the following proceedings, to-wit:

NO. 96 00851

OTTIE HOOKER

Appellant(s)

vs. Appeal From St. Francis Chancery

PRODUCERS TRACTOR COMPANY

Appellee(s)

Motion of Appellee Producers Tractor Company, Inc. to dismiss appeal is granted. Appeal dimissed. Newbern, J., not participating. Appellee's motion to stay briefing schedule. Moot.

IN TESTIMONY, That the above is true copy of the order of said Supreme Court, rendered in the case herein stated, I, Leslie W.Steen, Clerk of said Supreme Court, hereunto set my hand and affix the seal of said Supreme Court, at my office in the city of Little Rock, this 4th day of November, 1996.

/s/ Leslie W. Steen
Clerk

Original to Clerk
CC: Ottie Hooker
Hon. Kathleen Bell
Ralph W. Waddell

Filed: Nov. 6, 1996
Bette S. Green, Clerk
ST. FRANCIS COUNTY

Office of the Clerk
Supreme Court of the State Of Arkansas
Arkansas Court of Appeals
Justice Building
625 Marshall Street
Little Rocke, Arkansas 72201

Leslie W. Steen, Clerk

December 9, 1996

Ottie Hooker
Rt. 1, Bos 100
Palestine, AR 72372

RE: 96 00851 OTTIE HOOKER v.
PRODUCERS TRACTOR COMPANY

Dear Mr. Hooker,

The Arkansas Supreme Court made the following order today in the above styled case:

"Pro se petition for en banc hearing is denied. Newbern, J., not participating."

Sincerely,

/s/ Leslie W. Steen,
Clerk

LWS:rh
cc: James R. VanDover
Ralph W. Waddell
Hon. Kathleen Bell

ORDER ALLOWING SEQUESTRATION OF EQUIPMENT DIRECTING SHERIFF TO TAKE POSSESSION, AND VACATING SCHEDULING ORDER (TR-III-431)
(entered May 2, 1996)

Nothwithstanding David Hooker's verbal protests that appellant was too ill to appear, on April 18, 1996, several motions filed by Producers were heard by the Chancellor. An earlier hearing on the same motions had been continued because of appellant's illness.

At the end of the hearing, the Chancellor found that bankruptcy court's Agreed Order, entered June 9, 1994, is entitled to full faith and credit; that, even if appellant were present, he could not contradict the validity of that Agreed Order; that paragraph 9 of the Agreed Order is unambiguous; that the parties prior conduct demonstrates their inability to agree upon a supplemental adequate protection amount; Producers is entitled to have possession of the equipment and to store it with Nash Applicators in Brinkley, Arkansas, pending further orders; and the scheduled May 3 hearing on the merits of the parties' claims should be continued pending further orders.

The Sheriff is directed to take the

equipment from appellant's possession and store it on the Brinkley, Arkansas, premises of Nash Applicators.

/s/ Kathleen Bell, Chancellor

(seal)
KATHLEEN BELL
Chancery and Probate Judge
FIRST JUDICIAL CIRCUIT
OF ARKANSAS

P.O. Box 3588
West Memphis, AR 72390

April 17, 1996

Mr. Ottie Hooker
Route 2, Box 100
Palestine, Arkansas

Filed: Apr 18, 1996
Bette S Green,Clerk
ST.FRANCIS COUNTY

Mr. James R. VanDover
Post Office Box 646
Marianna, Arkansas

RE: Ottie Hooker v Producers Tractor Company, et al, St Francis County Case No. E-94-104

Gentlemen

A hearing is now scheduled for May 3, 1996, on the defendant's Motion to Terminate the Temporary Restraining Order now in place. A number of motions have been filed in this action which require resolution prior to this hearing date.

The plaintiff's motions, filed pro se, and their date of fillings are as follows:

1. Demand for Common Law Jury trial, Feb. 20, 1996
2. Petition to Dismiss James R. VanDover as Attorney For the Defendant, Feb 29,
3. Petition for Expenses and Sanctions Against VanDover, March 15,
4. Notice and Demand for Common Law Jury, March 15, April 9,

5. Notice of Durable Power of Attorney, March 15, and
6. Petition to Exclude the Participation of VanDover, March 21,
8. Petition to Compel Production of Documents, March 22 and
9. Notice and Demand that This Court not Deny Plaintiff Assistance of Counsel of choice that may not be a bar lawyer, March 26.

The defendant herein has filed the following motions:

1. Motion for Rule 11 Sanctions, March 8
2. Motion to Preclude participation of three named individuals, March 12 and
3. Contingent Motion to Compel Plaintiff to surrender or sequester farming equipment, March 22

Briefs in support of the motions and responses have been submitted by both parties. The Court is aware of the scheduling order of March 14, which allows for the filing of motions until April 22. The parties shall be allowed until that date for the submission of other issues, not ruled on here. Copies of all filed motions and responses should be forwarded to me in order that a decision may be reached prior to Mar 3.

The motions of the plaintiff shall be discussed first, in the order of filing.

A. DEMAND FOR COMMON LAW JURY TRIAL

The plaintiffs filed this complaint in equity, invoking the jurisdiction of this court, requesting that the defendant be restrained from selling certain farm equip-

ment. Since the filing of the petition, the plaintiff has demanded a jury trial. The constitutional right to a jury trial in an equity case has been previously settled by the Arkansas Supreme Court. In Jones v Reed, 267 Ark 237 (1979), the Court stated

> The constitutional right to trial by jury does not secure the right in all possible instances, but only in those cases in which it existed when our constitution was framed, it extends only to trial of issues of fact in civil and criminal cases . . .

See also Civil Service Commission v. Matlock, 205 Ark. 286 and Colclasure v. Kansas City Life Insurance Company, 290 Ark. 585 (1986).

The plaintiff's demands for jury trial filed February 20, March 15 and April 9 are all denied.

B.PETITION FOR DISMISSAL OF DEFENDANT'S COUNSEL

The plaintiff request that James VanDover be removed as counsel for the defendant. The plaintiff also request this court recuse itself due to membership in the Bar Association with VanDover.

While the Court and VanDover are both licensed by the State, this fact standing along, is not grounds for recusal of the Court. The fact VanDover is so licensed is not sufficient grounds for removal as the chosen counsel for the defendant. The plaintiff's petitions on this issue, filed February 29 and March 21, are denied.

C.MOTION FOR RULE 11 SANCTIONS

Both parties have filed motions for the imposition of sanctions. A reviews of these motions reveal they cannot be ruled on without the arguments of the parties. Resolution of these motions shall be held in abeyance pending the hearing on the merits.

D. DURABLE POWER OF ATTORNEY

The plaintiff executed and caused to be filed, on February 20, A Durable Power of Attorney. The plaintiff has given David O. Hooker, Bill Cockrell and Chris Parker the authority to act on his behalf. On March 15, the plaintiff then filed a pleading captioned "Notice of Durable Power of Attorney to be Heard On March 28, 1996 and Memorandum of Law." The plaintiff is here requesting these parties be allowed to act as his counsel in this action.

Only an individual licensed by the State is authorized to practice law. If there is to be any deviation from this requirement for the individuals named by the plaintiff, such a deviation must be authorized by the Arkansas Supreme Court. This trial court certainly does not have the authority to authorize unlicensed people to practice law. The plaintiff's petition of March 26 is denied.

E. PETITION TO COMPEL

The plaintiff's petition to compel is moot. The defendant's responses were filed March 22. The plaintiff contends the responses were not adequate. This petition to compel was filed April 12. The defendant has not responded as of this date. Therefore,

this petition will not be addressed at this time.

Two motions of the defendant have previously been addressed. The Motion for Sanctions will be addressed at a later hearing. The motion to preclude participation is made moot by the ruling in paragraph D of this Letter. The last motion, by Order of Judge Story, is to be presented on April 18.

If I have failed to address any pending issues, inform me of the fact. Mr. VanDover shall prepare the precedent He shall send the original to the Court, with a copy to Mr. Hooker. If Mr. Hooker has any objections to the form, he shall contact the Court in writing, with copy to Mr. VanDover, within 10 days of receipt. If there are no objections received in that time, the proposed precedent will be executed and filed.

/s/Kathleen Bell
KATHLEEN BELL
CHANCELLOR

Supreme Court, U.S.
FILED
JUN 24 1997
OFFICE OF THE CLERK

No. 96-1875

(2)

In The

Supreme Court of the United States

October Term, 1996

OTTIE HOOKER,

Petitioner,

vs.

JOHN DEERE CREDIT and
PRODUCERS TRACTOR COMPANY,

Respondents.

On Petition For A Writ Of Certiorari to the Arkansas Supreme Court

BRIEF OF PRODUCERS TRACTOR COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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14 pp

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

OPPOSITION TO JURISDICTION 1

POINT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI 1

STATEMENT OF THE CASE 2

ARGUMENT 4

The Seventh Amendment to the United States Constitution does not extend to state courts. The states are left to establish their own procedures. Petitioner invoked equity jurisdiction to obtain a temporary restraining order. The clean-up doctrine has survived constitution review in Arkansas 4

PERCEIVED MISSTATEMENT OF FACT 7

CONCLUSION 8

APPENDIX ..... App. 1

TABLE OF AUTHORITIES

Page(s)

CASES:

From the United States Supreme Court:

Edwards v. Elliott, 21 Wall. 532, 22 L.Ed. 487 (1874) 4

Frank v. Mangum, 237 U.S. 309, 35 S.Ct. 582 (1914) 1

Hardware Dealer Mut. Fire Ins. Co. v. Glidden Co., 284 U.S. 151, 52 S.Ct. 59, 76 L.Ed. 214 (1931) 5

Hawkins v. Bleakly, 243 U.S. 210, 37 S.Ct. 255, 61 L.Ed. 678 (1917) 1, 6

Iacaponi v. New Amsterdam Cas. Co., 258 F.Supp. 880 (W.D.Pa. 1966), aff'd 379 F.2d 311 (3d Cir. 1967), cert. denied 389 U.S. 1054, 88 S.Ct. 802, 19 L.Ed. 849 (1968) 4

Pearson v. Yewdall, 95 U.S. 294, 24 L.Ed. 436 (1877) 1, 4

Walker v. Sauvinet, 92 U.S. 90, 23 L.Ed. 969 (1875) 5

From the Arkansas Supreme Court:

Colclasure v. Kansas City Life Ins. Co., 290 Ark. 585, 720 S.W.2d 916 (1986), cert. den. 481 U.S. 1069, 107 S.Ct. 2462, 95 L.Ed.2d 145 (1987) 5, 6

Jones v. Reed, 267 Ark. 235, 590 S.W. 6 (1979) 5

Manitowoc Remanufacturing, Inc. v. Vocque, 307 Ark. 271, 819 S.W.2d 275 (1991) 5

OPPOSITION TO JURISDICTION

No jurisdiction to issue the requested Writ exists.

Petitioner premises his petition on the existence of circumstances to which Rule 10 (a) and (c) would apply. Section (a) is limited to decisions of a court of appeals. The decision to be reviewed imminating from the Arkansas Supreme Court, this section is not applicable.

That the Seventh Amendment to the United States Constitution does not apply to state courts was determined and settled early. *Pearson v. Yewdall*, 95 U.S. 294, 24 L.Ed. 436 (1877). That the Fourteenth Amendment operates to extend it to states has also been repeatly rejected. *Walker v. Sauvinet*, 92 U.S. 90, 23 L.Ed. 969 (1875); *Frank v. Mangum*, 237 U.S. 309, 35 S.Ct. 582 (1914); *Hawkins v. Bleakly*, 243 U.S. 210, 37 S.Ct. 255, 61 L.Ed. 678 (1917). These decisions have been accepted as binding authority by everyone except petitioner. Section (c) cannot therefore be invoked.

POINT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Seventh Amendment to the United States Constitution applies only to proceedings in the courts of the United States and does not in any manner govern or regulate trials by jury in state courts.

Petitioner initiated his civil action in the Chancery Court of St. Francis County, Arkansas, to obtain an ex

parte temporary restraining order. The Chancellor, having assumed subject matter jurisdiction to grant the restraining order, may constitutionally proceed under the clean-up doctrine to determine all other issues of facts. The Constitution of Arkansas, as interpreted by the Arkansas Supreme Court, is not violated.

STATEMENT OF THE CASE

In 1988 and 1990, petitioner purchased at retail three pieces of farming equipment from Producers Equipment Company. Respondent John Deere Credit (John Deere hereafter), provided purchase money financing. Under the financing contracts, petitioner was obligated to repay the debts in annual installments beginning in 1989 and extending through 1995.

In September, 1993, petitioner defaulted. John Deere repossessed the equipment. John Deere then assigned the financing contracts to respondent Producers Tractor Company, Inc. (Producers hereafter), the successor to original seller. Producers published notices of its intent to make a public sale of the equipment on February 22, 1994.

On February 23, 1994, petitioner filed his complaint (Respondent's Appendix pg. App. 1 ("Appx. pg." hereafter)) in the Chancery Court of St. Francis County, Arkansas. He sought to restrain Producers' public sale and to recover compensatory damages from both Producers and John Deere. The restraining order was issued without prior notice. Later, the Chancellor ordered petitioner and Producers to engage in debt mediation.

On August 24, 1994, petitioner and Producers reached an agreement. Within fourteen days thereafter, petitioner obligated himself to borrow approximately $100,407 from a third party and to pay that amount to Producers to obtain possession of the equipment.

Being unable to obtain the required refinancing, petitioner filed a petition for bankruptcy relief with the United States Bankruptcy Court for the Eastern District of Arkansas on November 9, 1994. He invoked relief under Chapter 12 of the Bankruptcy Code. The automatic stay, effected by 11 U.S.C. § 362, usurped the jurisdiction of the Chancery Court.

In the bankruptcy case, petitioner filed an adversary proceeding under 11 U.S.C § 542 to obtain possession of the equipment. To settle that proceeding, an agreed order was entered. Through the order, petitioner obtained possession of the equipment in 1995 and paid a substantial portion of the 1995 adequate protection amount. Possession in 1996 and subsequent years was conditioned upon future adequate protection amounts being paid.

Petitioner was unable to develop an acceptable plan. His bankruptcy case was dismissed with prejudice on February 4, 1996. The automatic stay was vacated with the dismissal.

Petitioner having breached the agreement that the parties reached through the judicially mandated mediation process, Producers then moved the Chancery Court for an order vacating the restraining order and directing petitioner to return the equipment. Reacting, petitioner filed several motions. One motion sought trial by jury, another sought to disqualify Producers' attorney because

both he and the Chancellor were lawyers and members of the Bar of Arkansas and another asked that laymen, designated in his Durable Powers of Attorney, be recognized as his counsel.

The Chancellor issued findings of fact and conclusions of law through her letter-opinion dated April 17, 1996 (Pet. Appx. pg. 5-9). The Chancellor's Order (Pet. Appx. pg. 3) was entered May 2, 1996. In compliance with the Order, the equipment was impounded and is currently stored with the designated third party while the parties move toward a final hearing.

Petitioner's appeal to the Arkansas Supreme Court was dismissed on December 18, 1996.

ARGUMENT

The Seventh Amendment to the United States Constitution does not extend to state courts. The states are left to establish their own procedures.

Petitioner invoked equity jurisdiction to obtain a temporary restraining order. The clean-up doctrine has survived constitution review in Arkansas.

That the Seventh Amendment to the United States Constitution applies only to courts of the United States and not to state courts was established early. *Pearson v. Yewdall*, 95 U.S. 294, 24 L.Ed. 436 (1877). It does not limit the powers of the several states. *Edwards v. Elliott*, 21 Wall. 532, 22 L.Ed. 487 (1874). A party to a civil action in state court has no right to trial by jury under either the Seventh Amendment or the Fourteen Amendment of the United States Constitution. *Iacaponi v. New Amsterdam*

Cas. Co., 258 F.Supp. 880 (W.D.Pa. 1966), aff'd 379 F.2d 311 (3d Cir. 1967), cert. denied 389 U.S. 1054, 88 S.Ct. 802, 19 L.Ed. 849 (1968). Trial by jury is not a privilege or immunity of national citizenship which the states are forbidden by the Fourteenth Amendment to abridge. *Walker v. Sauvinet*, 92 S.Ct. 90, 23 L.Ed. 969 (1875).

A state may establish its own procedures and practices regarding the conduct of civil litigation including the right of trial by jury. *Hardware Dealer Mut. Fire Ins. Co. v. Glidden Co.*, 284 U.S. 151, 52 S.Ct. 59, 76 L.Ed. 214 (1931). Article 2, Section 7 of the Arkansas Constitution assures a litigant of a jury trial only in those cases that are so triable at common law. *Jones v. Reed*, 267 Ark. 235, 590 S.W. 6 (1979).

Arkansas' law court is the circuit court. It alone has the assistance of juries. The chancery is a court of equitable jurisdiction, and the chancellor determines issues of fact without a jury. Injunctions and temporary restraining orders are equitable remedies over which the chancery court has jurisdiction. *Manitowoc Remanufacturing, Inc. v. Vocque*, 307 Ark. 271, 819 S.W.2d 275 (1991). Although circuit courts are not wholly without jurisdiction to grant injunctions, petitioner elected to obtain his temporary restraining order in the chancery court. Having obtained jurisdiction for one purpose, the clean-up doctrine allows the chancellor to adjudicate all other issues of fact and law. The clean-up doctrine does not violate the Arkansas Constitution. *Colclasure v. Kansas City Life Ins. Co.*, 290 Ark. 585, 720 S.W.2d 916 (1986), cert. den. 481 U.S. 1069, 107 S.Ct. 2462, 95 L.Ed.2d 145 (1987). Neither does it offend the Seventh Amendment to the United States Constitution because it is not extended by the Fourteenth

Amendment to the states. *Colclasure v. Kansas City Life Ins. Co., supra,* citing *Hawkins v. Bleakly,* 243 U.S. 210, 37 S.Ct. 255, 61 L.Ed. 678 (1917) at 720 S.W.2d at 918.

The cases cited by petitioner in support of his petition do not do so.

In *Pennsylvania Coal Co. v. Mahon,* cited by petitioner at page 4 of his brief, this court held that state statute that prevented the removal of coal in the proximity of personal residences was an improper taking and exceeded the bounds of the constitutional exercise of the policy power. The court was not then concerned with Seventh Amendment rights; indeed, neither the amendment, a reference to it, nor the word jury or the term jury trial can be found in the opinion.

In *Marbury v. Madison,* individuals seeking to compel action by the secretary of state brought an original action in this court. Its subject was not a matter triable by a jury in a state court. Neither was the Seventh Amendment involved.

Miranda v. Arizona examined the admissibility of incommunicado statements obtained from criminal defendants by state officers in light of the Fifth Amendment to the United States Constitution. Again, it involved neither the Seventh Amendment nor a right to trial by jury in a civil case.

Boyd v. U.S. was the appeal of a criminal conviction in the United States district court based on a jury verdict. Constitutional concerns were the Fourth and Fifth Amendments, not the Seventh.

In *State of Georgia v. Brailsford,* the conflict was between a judgment creditor and Georgia which asserted a claim to the judgment debtor's property under a legislative act that permitted confiscation of property owned by a British citizen. The opinion never mentions either the Seventh Amendment or trial by jury.

PERCEIVED MISSTATEMENT OF FACT

In Rule 15 counsel are reminded of their obligation to point out in the brief in opposition any perceived misstatements of fact contained in the petition that bear on the presented issues. At page 3 of his brief, petitioner asserts, "As this case progressed the trial court issued an Order that . . . **thereafter dismissing my civil complaint** . . . (emphasis added). That is an untrue statement.

As late as June 12, 1997, petitioner was continuing to resist respondent's discovery efforts.

This misstatement is included without deciding whether it bears on the issues presented.

CONCLUSION

That the Seventh Amendment applies only to United States courts is well established. That it applies to state courts under the Fourteenth Amendment has been rejected. A writ of certiorari is not justified.

The petition should be denied.

Respectfully submitted,

JAMES R. VAN DOVER
Attorney for Producers
Tractor Company

APPENDIX

IN THE CHANCERY COURT OF
ST. FRANCIS COUNTY, ARKANSAS

OTTIE HOOKER — PETITIONER

VS — CASE NO. E-94-104

JOHN DEERE CREDIT and
PRODUCERS TRACTOR CO. — RESPONDENT

Filed February 23, 1994
Time: 8:40 A.M.
Bette S. Green, Clerk
St. Francis County

COMPLAINT IN EQUITY AND MOTION FOR AN EMERGENCY HEARING FOR A TEMPORARY RESTRAINING ORDER

Petitioner, Ottie Hooker, for his petition, states:

1. Petitioner (Hooker) is a resident of St. Francis County, Arkansas.

2. Respondent (John Deere Credit) is a Corporation registered by the Secretary of State to do business in the State of Arkansas.

3. Respondent (Producers Tractor Company) is a Corporation registered by the Secretary of State to do business in the State of Arkansas.

4. On or about September 20, 1993 the Respondents repossessed the property of Hooker.

5. The property included a Rice Combine, ID. Number #H09600X635612, a Flexible Platform ID> Number #H00930F635644, and MFWD Tractor ID

Number #RW4850P012239. Each of these items having a value of over $25,000.00 a piece. Total value of equipment is approximately $140,000.00.

6. All of this equipment is used by Hooker and his son in their farming operation.

7. The Respondents, in violation of Arkansas law, did not present the matter of Hookers debt before the Arkansas Board of Mediation prior to their taking of the equipment. Arkansas Act 829 of 1989.

8. Respondents are now attempting to sell Hookers equipment outside the scrutiny of the Courts and in violation of both Hookers rights to mediation and his right to Notice of Sale.

9. Hooker hereby moves for a temporary restraining order preventing Respondents from selling the above equipment. If the Court does not permit an emergency hearing and issue such order the equipment will be sold and Hooker will be irretrievably harmed.

10. Hooker further moves for a final hearing requiring Respondents to return his equipment and start the required mediation process required by Arkansas law. Hooker should be awarded any damages resulting from his loss of use of the equipment and any damage, including loss of value of the equipment, caused by negligence and/or neglect of Hooker's equipment caused directly or indirectly by respondants [sic].

11. Respondant's [sic] should be held jointly and severally liable for any damages or failure to comply with the court's orders in this matter.

WHEREFORE, premises considered, petitioner prays the Court to grant an immediate hearing for a temporary restraining order and set a final hearing granting the above requested relief.

Respectfully submitted,

/s/ James R. Noblin
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